



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 11, 1992

Ms. Wanda F. Stewart
Executive Director
Texas Board of Examiners
in the Fitting and Dispensing of Hearing Aids
4800 North Lamar, Suite 150
Austin, Texas 78756

OR92-213

Dear Ms. Stewart:

You have inquired whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID # 15435.

The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids has received a request under the Open Records Act for, inter alia, the names and addresses of all persons who have filed complaints with the Board over the last two years concerning licensees licensed by the Board. In response to this request, you have submitted for our inspection a list of cases filed with the Board, which states the date of the complaint, the name and address of the complainant, the name and address of the hearing aid provider, and the disposition of the complaint. The Board contends that the names and addresses of the complainants are excepted from public disclosure pursuant to section 3(a)(1) of the Act.

The Open Records Act presumes that state records are open to the public unless they are within one of the exceptions set out in section 3(a). See Open Records Decision No. 528 (1989) at 4; *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 324 (Tex. App.--Houston [1st Dist.] 1984, no writ). Section 3(a)(1) excepts from public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." The Board's request for decision states, without further explanation, that "[s]ince a hearing aid is a medical device" the names and addresses of those who have filed complaints with

the Board are protected by section 3(a)(1). After reviewing the documents at issue and the applicable authorities, we conclude that the documents are not excepted under section 3(a)(1).

Articles 4566-1.02 through 4566-1.19, V.T.C.S., created the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids. The Board is responsible for licensing persons engaged in fitting and dispensing hearing aids and monitoring consumer complaints concerning hearing aid providers. *See* V.T.C.S. arts. 4566-1.04 through 4566-1.12B. Article 4566-1.12B(d) provides:

The Board shall keep an information file about each complaint filed with the Board relating to a licensee. If a written complaint is filed with the Board relating to a licensee, the Board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

The Board has not advised us whether any of the requested information involves an undercover investigation, and in the absence of such an advisement we assume the requested information does not involve an undercover investigation.

The Medical Practice Act, V.T.C.S. article 4495b, provides that a patient's medical records are deemed confidential, however this provision is limited to medical records created, maintained, or made at the direction of a physician. *See* V.T.C.S. art. 4495b, § 5.08(b) ("Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.") The records at issue are not medical records, and hearing aid fitters and dispensers are not physicians per se, and thus the Medical Practice Act does not apply. *See* V.T.C.S. arts. 4566-1.06 (providing examination and licensing qualifications for hearing aid fitters and dispensers) *and* 4566-1.10(10) (stating that license is subject to revocation if licensee uses term "doctor," or like words, in the conduct of his business which would connote that licensee was a physician or surgeon).

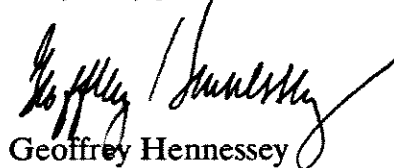
The common law and the constitution recognize a right to privacy; however the records at issue are not sufficiently sensitive to be excepted on this ground. The common law right to privacy applies to

highly intimate or embarrassing facts about a person's private affairs, such that its publication would be highly objectionable to a person of ordinary sensibilities.

Industrial Found'n of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668, 683 (Tex. 1976). The constitutional right to privacy is violated by "invasions of privacy involving the most intimate aspects of human affairs." Open Records Decision No. 455 at 5 (1987) (*quoting Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490, 492 (5th Cir. 1985). The names of individuals who have filed complaints with the Board, does not reveal "highly intimate or embarrassing facts about a person's private affairs," and thus are not excepted from disclosure on privacy grounds.

In sum, the records at issue are not deemed confidential by law for the purposes of section 3(a)(1) of the Act, and therefore the records must be disclosed. Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-213.

Very truly yours,



Geoffrey Hennessey
Assistant Attorney General
Opinion Committee

cc: Mr. Kenneth Bloom
Public Citizen
1205 Nueces
Austin, Texas 78701